

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE)	
CORPORATION AS RECEIVER FOR THE)	
NATIONAL REPUBLIC BANK OF CHICAGO,)	
)	
Plaintiff)	No. 19-cv-6917
v.)	
)	Judge Robert M. Dow
HILREN PATEL,)	
)	
Defendant)	
)	

DEFENDANT HIREN PATEL’S MOTION TO DISMISS THE COMPLAINT

Pursuant to Fed. R. Civ. P. 8, Fed R. Civ. P. 9(b), and Fed. R. Civ. P. 12(b)(6) Defendant Hiren Patel respectfully moves to dismiss all counts of the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). The grounds supporting this motion are set forth below and in the accompanying memorandum.

1. Count One, for breach of fiduciary duty, is based on averments of fraud, and so that claim is subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). The FDIC has not alleged with particularity fraudulent conduct by Patel, and so Count One should be dismissed pursuant to Rule 9(b).

2. In addition, the allegations of Count One do not meet the plausibility requirements of Fed, R, Civ. P. 8 and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007), and so Count One should be dismissed pursuant to Rule 8 as well.

3. Count Two, for unjust enrichment, should be dismissed for the same reasons applicable to Count One. First, the unjust enrichment claim is predicated on the same allegations of fraudulent conduct upon which the breach of fiduciary duty claim rests. Rule 9(b) is thus

applicable and dictates dismissal. Second, a claim of unjust enrichment arises when a defendant unjustly retains a benefit to the plaintiff's detriment because of conduct that simultaneously gives rise to a claim in tort, contract, or statute. Because the unjust enrichment claim in Count Two, and the breach of fiduciary duty claim in Count One, arise from the same allegedly improper conduct, they fall together.

4. Count Three purports to be a claim for "money had and received" under Illinois law, but the FDIC has not pleaded the elements of a such a claim. A plaintiff must allege that (1) he was compelled to pay money to the defendant, (2) the defendant had no legal right to demand the money, and (3) payment was necessary in order to avoid an injury to his business, person or property. The FDIC does not plead that it, standing in the shoes of National Republic Bank, was compelled to pay money to Patel or that payment was necessary to avoid injury to the Bank's business or property. To the extent that the FDIC seeks the imposition of a constructive trust, that is not a separate cause of action under Illinois law. Count Three should therefore be dismissed pursuant to Rule 12(b)(6).

WHEREFORE, for the foregoing reasons, and as set forth in the accompanying memorandum, which is incorporated here by reference, plaintiff's Complaint should be dismissed.

December 20, 2019

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Respectfully submitted,

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